



STATE OF MICHIGAN

**Department
of Human
Services**

**Field Operations Administration
Children's Services Administration**

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Memorandum

L-10-117-CW

To: County Directors
District Managers
Child Welfare Urban Field Operations Director

Date: September 17, 2010

From: Terry A. Salacina, Director, Field Operations Administration
Kathryne A. O'Grady, Director, Children's Services Administration

Subject: Involving Incarcerated Parents: Required Practice Changes

Response Due: N/A

On May 26, 2010, the Michigan Supreme Court decided the case of *In re Mason*. The court held that in all cases in which the department must make reasonable efforts to reunify a family:

- The petitioner must ensure that an incarcerated parent has the opportunity to participate via telephone in every court hearing in a child protection proceeding.
- DHS and Private Agency Foster Care (PAFC) providers must ensure that an incarcerated parent has an opportunity to participate in the development of a case service plan that addresses that incarcerated parent's identified needs and is evaluated on the basis of his or her compliance with and benefit from that plan.
- The petitioner must not rely solely on a parent's incarceration to establish a ground to terminate his or her parental rights.

Since the *Mason* decision was issued, the Michigan Court of Appeals has reversed several orders terminating the parental rights of incarcerated parents and remanded the cases to the trial courts for further proceedings.

This L-letter explains the profound and immediate practice changes required by the *Mason* decision. An interim policy bulletin will be issued as soon as possible, and related changes to the Services Worker Support System (SWSS) will be made in the future. **In all cases—whether a termination of parental rights order has been reversed or the case is ongoing—the following practice changes must be implemented immediately.**

Initial or Amended Petition Requirements

If a legal parent is incarcerated, a Children's Protective Services (CPS) worker must confirm the parent's prison or jail number, prison or jail facility, charge or conviction offense, and parole or release eligibility date. Document this information in the **Investigation Report (DHS-154)**, Social Work Contacts, and ensure that it is in any petition filed. In addition to allegations against a non-incarcerated parent, the CPS worker or the department's legal representative must include, if appropriate, allegations of abuse or neglect against the incarcerated parent. Allegations of neglect are appropriate if the incarcerated parent has failed to provide or arrange

proper care and custody for the child, or has failed to support or contact the child, either before or after the parent was incarcerated.

Participation in Court Hearings

A court rule, MCR 2.004, requires the petitioner in a child protection proceeding to notify the court that a party to the proceeding is incarcerated by the Michigan Department of Corrections (MDOC). This notification allows the court to arrange for the prisoner's participation in court hearings via telephone. When a CPS worker or the department's legal representative files a petition in a case involving a parent incarcerated by the MDOC, the petition must contain in the caption a clause stating, "A telephonic hearing is required pursuant to MCR 2.004." The caption must also contain the parent's prisoner number and facility. The *Mason* case requires courts to allow an incarcerated parent's telephonic participation in *all* hearings, including review hearings.

If a parent is incarcerated in a facility located in the same county as the court conducting the proceedings, the court may use a writ of habeas corpus to have the parent present at a hearing. If a parent is incarcerated in federal prison or another state, the court may allow the parent to participate by phone.

Participation in Permanency Planning Conferences (PPCs) Via Telephone

PPCs are not court or legal proceedings, and the *Mason* decision does not specify requirements for incarcerated parents' participation in PPCs. However, because PPCs are important case planning tools, workers must comply with the following guidelines. DHS and PAFC providers should pay particular attention to identifying an incarcerated parent's relatives who may serve as a placement for a child.

DHS and PAFC providers are *required* to provide prior notice to an incarcerated parent of only the following PPCs:

- A "considered removal" PPC.
- A "change in permanency goal" PPC.
- A "child in care for nine months with a goal of reunification" PPC.

If the circumstances permit, DHS and PAFC providers must attempt to facilitate an incarcerated parent's participation in other PPCs.

The assigned worker **must** provide and document notice to the incarcerated parent by mail or telephone. The worker must contact the warden of the facility and ask that the parent be allowed to participate in the PPC by phone; the worker must document this contact in SWSS. If time allows, the worker must send a DHS-1555-CS, Authorization to Release Information, and ask the parent to sign and return it. A worker should notify the parent's attorney of the PPC, and the attorney must be allowed to attend the PPC.

Following each PPC, workers must send incarcerated parents all information that a non-incarcerated parent receives, regardless of whether the incarcerated parent participated in the PPC.

Participation in Case Service Plans

In all cases in which the department must make reasonable efforts to reunify a family, the foster care worker must attempt to engage incarcerated parents in developing a case service plan. This requirement applies regardless of the length of the parent's incarceration. Do not follow the instructions in the **DHS-65, Initial Service Plan (ISP)**, and the **DHS-66, Updated Service Plan (USP)**, that allow a worker to disregard a parent who will be incarcerated for a period of two

years or more. Document in the Social Work Contacts section all efforts to engage incarcerated parents in service planning.

The worker must first determine the services and work opportunities available within the facility in which the parent is incarcerated. Workers are not required to arrange for service providers outside of a facility to deliver services within the facility but may utilize such services if they are currently available within the facility. For parents under the jurisdiction of the MDOC, workers may identify available services at <http://www.michigan.gov/corrections>. Information on federal prisons may be found at <http://www.bop.gov/>. Information on services available at county jails or out-of-state facilities may be obtained via the Internet or by contacting the facility. In all cases, if the facility employs a social worker or psychologist, workers must contact that person to discuss programming options.

The worker must then send a letter to the incarcerated parent with the parent's prison number on the envelope; copy the court and the other parties to the case. The letter must:

- Ask the parent whether he or she wishes to remain a parent to the child, and to identify any relatives who may be interested in placement of the child.
- Explain the purpose of the case service plan.
- Solicit the parent's views of his or her needs and strengths.
- Note the services and work opportunities available to the parent.
- Ask the parent to describe his or her plan to provide proper care and custody of the child upon release from incarceration.
- Ask the parent to add the foster care worker to his or her call list so that the parent and worker may more easily communicate via telephone regarding the case.

Foster care workers must complete the **DHS-145, Family Assessment/Reassessment of Needs and Strengths**, for all incarcerated parents. The worker may send a blank assessment form to the parent and ask that he or she fill it out and return it. In all cases, gather complete information about the parent, including information pertaining to the time before the parent was incarcerated.

*Given the services available to the incarcerated parent, the **DHS-67, Parent-Agency Treatment Plan and Service Agreement (PATP)**, must address the parent's needs and specify what the parent must do to be reunified with the child. It must also address parenting time or contact between the parent and child. Unless there is a judicial finding that parenting time or contact would be harmful to the child or there is a "no contact order" in place, the worker must attempt to arrange for regular visits or contact between parent and child. Alternatives to regular visitation at a jail or prison facility may be contact via letters sent through the worker or phone contact (monitored if necessary).*

After formulation of the case service plan, the worker must send two copies to the incarcerated parent. An accompanying letter must clearly request that the parent sign one copy and return it to the worker and keep the other copy for the parent's reference. In addition, unless already done, enclose a release of confidential information form (DHS-1555-CS) and ask the parent to sign and return the form. This will allow the worker to verify the parent's compliance with the service plan through prison records or contact with prison service providers. Include a self-addressed stamped envelope.

Assessing Reunification

Foster care workers must evaluate incarcerated parents' compliance with and **benefit** from services in the same manner as they evaluate non-incarcerated parents. Use the **DHS-147, Reunification Assessment**. Address the parent's progress or lack of progress in the USP and

any court report submitted to the court for a review hearing or permanency planning hearing. Workers must obtain proof of a parent's compliance with and benefit from services from the parent and prison service providers.

Note: The Family Information section in the SWSS-FAJ Case Management Module allows a worker to choose "incarceration" as a reason for a parent's non-participation in the service plan. **Workers must not select this option.** In the near future, "incarceration" will be removed from the menu of "Reasons for Non-Participation." The worker may use "Unwilling" or "Refused" if an incarcerated parent has been offered an opportunity to participate in the service plan but is unwilling or refuses to participate. The ISP, USP, and PATP templates located on the DHS public web site will be revised to remove incarceration as a reason for non-participation.

If the parent has been paroled or released from incarceration or will likely be paroled or released in the near future, identify any additional services the parent needs prior to reunification with the child and update the case service plan accordingly. If the incarcerated parent has been convicted of or substantiated for criminal sexual conduct against a child, refer to FOM 722-12, Expenditure of State Funds in Substantiated Sexual Abuse Cases, before proceeding with efforts to reunify a child with the parent after his or her release from incarceration. A court order may be required.

Supplemental Petitions Requesting Termination of Parental Rights

Do not allege a parent's incarceration as the *sole reason* for terminating his or her parental rights. Under MCL 712A.19b(3)(h), the department must prove **all** of the following:

- The parent's incarceration will deprive the child of a normal home for more than two years in the future.
- The parent has not provided for the child's proper care and custody while incarcerated (for example, by arranging for a relative to care for the child).
- There is no reasonable expectation that the parent will be able to provide the child with proper care and custody within a reasonable time considering the child's age. A petition may allege the parent's failure to benefit from available services while incarcerated. If the parent will not be released or paroled in the near future, allege the parent's lack of benefit from services, the lengthy incarceration, and the child's needs.

If appropriate, consider permanent placements other than adoption for a child, including juvenile guardianship and permanent placement with a fit and willing relative.

Number and Status of Previous L-Letters Issued on the Same Subject: None

Contact Office: Office of Legal Affairs (for questions about cases reversed on appeal); Children's Services Administration (for policy questions)

Telephone Number and E-mail address of Contact: Luttrell Livingston, Office of Legal Affairs, 517-373-2082 or LivingstonL@Michigan.gov; Nancy Rostoni, Foster Care Program Office, 517-335-6071 or RostoniN@Michigan.gov

Distribution: CPS, DHS and PAFC foster care workers and supervisors

Obsolete Date: 9/1/11 or until superseded by policy, whichever is sooner

c: Executive Staff
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